

REMARKS

Claims 1-24 were pending in the application. Claim 1 is an independent claim and claims 2-24 depend therefrom. Claims 25-31 were previously withdrawn. Claims 1-2, 5-6, 9-10, 13 and 17 are currently amended. The Applicant respectfully requests reconsideration of pending claims 1-24, in light of the above-mentioned amendments and the following remarks.

Rejections Under 35 U.S.C. §§ 102(e)/ 103(a) – Miller (Claims 1-3, 5, 9-11, 13-14 and 17-24)

On pages 2-4 of the final Office Action, independent claim 1 and dependent claims 2-3, 5, 9-11, 13-14 and 17-24 were rejected under 35 U.S.C. §§ 102(e)/103(a) as being anticipated by or obvious over Miller (U.S. Patent No. 6,620,094). Without acknowledging that Miller qualifies as prior art under 35 U.S.C. § 102(e), the Applicant respectfully traverses the rejections for at least the following reasons.

With regard to the anticipation rejections, MPEP 2131 states, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). MPEP 2131 also states, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 (“MPEP”) states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some

articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

Regarding claim 1, the Applicant respectfully submits that Miller fails to teach, suggest, or disclose, for example, “[a] system that enhances the performance of a cochlear implant using a preprocessor, the system comprising...a first processor coupled to said plurality of signal input devices for performing signal processing on signals received from said plurality of signal input devices, wherein said first processor comprises at least one automatic-switching mechanism configured to at least one of: switch between modes of said microphone, switch between said microphone and said telecoil based at least in part on detection of a magnetic field, and switch between a plurality of listening programs based at least in part on detected characteristics of signals received from said plurality of signal input devices; and a second processor that processes and encodes the signal in cochlear implants,” as set forth in Applicant’s independent claim 1.

Miller teaches “[a]n interface system for semi-implantable and fully implantable hearing aid devices that provides direct delivery of audio input from external wireline and wireless sources to the speech processor of the hearing aid. The speech processor of the hearing aid processes the audio inputs to produce a processed signal for a transducer portion of the hearing

aid that is implanted in a hearing impaired individual. In a semi-implantable hearing aid, the interface system could be included in the external portion of the hearing aid or be included in an audio input device that replaces the external portion of the hearing aid when sound from a wireless or wireline source is desired. In a fully implantable hearing aid, an audio input device including the interface system is provided for use when sound from a wireless or wireline source is desired.” (Miller, Abstract).

With regard to “a first processor coupled to said plurality of signal input devices for performing signal processing on signals received from said plurality of signal input devices, wherein said first processor comprises at least one automatic-switching mechanism configured to at least one of: switch between modes of said microphone, switch between said microphone and said telecoil based at least in part on detection of a magnetic field, and switch between a plurality of listening programs based at least in part on detected characteristics of signals received from said plurality of signal input devices,” as set forth in Applicant’s independent claim 1, the final Office Action states the following:

Interface system 301 may contain its own circuitry and software to provide input source selection by masking out various sources and thus selecting the strongest input mode and extracting out the best signal fed into the processor. See column 6 line 50 to column 7 line 24. The examiner considers this embodiment to constitute automatic switching of sources. In addition, user selected switching may be used. Applicant provides no details as to their means for switching and thus the examiner considers such to be inherent to Miller or at least obvious.

(Final Office Action, Page 3). The Applicant notes that Miller’s disclosed method of selecting the strongest input mode and extracting out the best signal fed into the processor is different than “said first processor comprises at least one automatic-switching mechanism configured to at least one of: switch between modes of said microphone, switch between said microphone and said telecoil based at least in part on detection of a magnetic field, and switch between a plurality of listening programs based at least in part on detected characteristics of signals received from said plurality of signal input devices,” as recited in Applicant’s independent

claim 1. The Applicant further notes that Miller's user selected switching is clearly not automatic switching as is known by those of ordinary skill in the art. The Applicant also notes that contrary to the final Office Action's assertion that "Applicants' specification concerning their own specific embodiment mentions nothing about automatic switching, but merely discusses conventional hearing aids," (Office Action, Page 5) the Applicant discloses automatic switching mechanisms, for example, at least in paragraphs [0006], [0011] and [0041] of Applicant's specification. In addition, after the Applicant defines these automatic-switching mechanisms as "hearing aid signal processing technologies," the Applicant's specification continues to refer to these automatic-switching mechanisms generally as the hearing aid signal processing performed by the hearing aid signal processor, which is also referred to as the front end signal processor (*See e.g.*, Fig. 2a, 21 and Paragraph [0045], Lines 7-9; Fig. 2b, 31; Fig. 2c, 51; Fig. 2d, 61; Fig. 2e, 71; Fig. 3c, 303; Fig. 4c, 313; Fig. 8, 703; etc.). In other words, although the specification does not explicitly list the automatic-switching mechanisms and other hearing aid processing technologies each time the specification refers to the hearing aid/front end processing, those skilled in the art having read the specification as a whole would readily understand that the hearing aid signal processor (i.e., front end processor) performs the automatic-switching mechanisms disclosed.

Nowhere in Miller is there any disclosure regarding "said first processor comprises at least one automatic-switching mechanism configured to at least one of: **switch between modes of said microphone**, **switch between said microphone and said telecoil based at least in part on detection of a magnetic field**, and **switch between a plurality of listening programs based at least in part on detected characteristics of signals received from said plurality of signal input devices**," as recited in Applicant's independent claim 1. Because the Office Action has failed to show "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" as required for an anticipation rejection under MPEP 2131, the rejection under 35 U.S.C. § 102(e) cannot be maintained. Further, with regard to the rejections under 35 U.S.C. § 103(a), the Applicant notes that the Office Action fails to set forth a *prima facie* case of obviousness. In addition, the Applicant submits that

Applicant's independent claim 1 is allowable over Miller.

Therefore, for at least the above stated reasons, Applicant respectfully submits that the Miller reference fails to teach, suggest, or disclose Applicant's invention as set forth in claim 1. The Applicant believes that claim 1 is allowable over Miller. Applicant respectfully submits that claim 1 is an independent claim, and that claims 2-24 depend either directly or indirectly from independent claim 1. Because claims 2-24 depend from claim 1, Applicant respectfully submits that claims 2-24 are allowable over the Miller reference, as well. The Applicant further submits that each of claims 2-24 is independently allowable. The Applicant respectfully requests, therefore, that the rejection of claims 1-3, 5, 9-11, 13-14 and 17-24 under U.S.C. §102(e) and/or §103(a), be withdrawn.

Rejections Under 35 U.S.C. §103(a) – Miller and Griffith (Claims 4, 6-8, 12 and 15-16)

On pages 4-5 of the final Office Action, dependent claims 4, 6-8, 12 and 15-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Miller or Miller in view of Griffith et al. (U.S. Patent No. 6,842,647, hereinafter "Griffith"). The Applicant respectfully submits that claims 4, 6-8, 12 and 15-16 depend either directly or indirectly from independent claim 1. Applicant believes that claim 1 is allowable over the proposed combination of references, in that Griffith fails to overcome the deficiencies of Miller, as set forth above. Because claims 4, 6-8, 12 and 15-16 depend from independent claim 1, Applicant respectfully submits that claims 4, 6-8, 12 and 15-16 are allowable over the proposed combination of Miller in view of Griffith, as well. Applicant also asserts that each of claims 4, 6-8, 12 and 15-16 is independently allowable.

Therefore, for at least the reasons set forth above, Applicant respectfully requests that the rejections of claims 4, 6-8, 12 and 15-16 under 35 U.S.C. §103(a) be withdrawn.

Final Matters

The Office Action makes various statements regarding claims 1-24, 35 U.S.C. § 102(e), 35 U.S.C. § 103(a), the Miller reference, the Griffith reference, one of ordinary skill in the art, etc. that are now moot in view of the above amendments and/or arguments. Thus, the Applicant will not address all of such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicant reserves the right to argue additional reasons supporting the allowability of claims 1-24 should the need arise in the future.

CONCLUSION

Applicant respectfully submits that claims 1-24 are in condition for allowance, and requests that the application be passed to issue.

Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Please charge any required fees not paid herewith or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Date: February 17, 2009

Respectfully submitted,

/Philip Henry Sheridan/

Philip Henry Sheridan
Reg. No. 59,918
Attorney for Applicant

McAndrews, Held & Malloy, Ltd.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
(T) 312 775 8000
(F) 312 775 8100